Supreme Court, U.S.
FILED
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No.

IN THE

Supreme Court of the United States

JOSEPH G. GIVENS, an individual,

Petitioner,

v.

ALABAMA DEPARTMENT OF CORRECTIONS, MICHAEL W. HALEY, individually, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

DONALD A. CHAPMAN
Attorney for Petitioner
ALBANY LEGAL BUILDING
809 6TH AVENUE, SE
DECATUR, ALABAMA 35601
256-350-1700

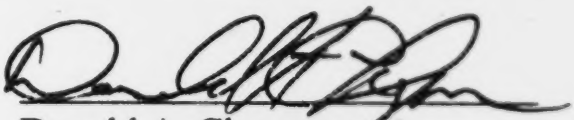
Question Presented For Review

Whether the common law right of "interest follows principle" applies to State prisoners absent a law revoking that right for them and whether the State can revoke that common law right.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Name of Party	Interest
Hon. Lynnwood Smith	United States District Judge
Michael W. Haley	Defendant
Beltina Carter	Defendant
Charles Hadley	Defendant
Donal Campbell	Defendant
Joseph G. Givens	Plaintiff
Hon. Andrew W. Redd	Counsel for Defendants
Hon. Kevin C. Newsom	Counsel for Defendants
Hon. Donald A. Chapman	Counsel for Plaintiff

Counsel for the Petitioner hereby certifies the above listed persons are known to have an interest in the outcome of this cause.



Donald A. Chapman
Attorney for Petitioner

CERTIFICATE OF TYPE SIZE & STYLE

This Petition for Writ of Certiorari uses 14 point Times New Roman.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Joseph Givens, respectfully petitions this Court to issue a writ of certiorari to review the judgement of the United States of Appeals for the Eleventh Circuit in ***Givens v. Alabama Department of Corrections, et al.***

Citation of Court of Appeals and District Court Opinions

The opinion of the Court of Appeals is reported at 381 F.3d 1064. App. A . The order denying the petition for rehearing is unreported. App. B.
The opinion of the District Court for the Northern District of Alabama is unreported. App. C.

Statement Of Jurisdiction

This is a timely-filed petition for writ of certiorari from the opinion and judgment entered on October 7, 2004, which affirmed District Court's judgment for ***ALABAMA DEPARTMENT of CORRECTIONS, et al.*** and against ***JOSEPH G. GIVENS***. This

court has jurisdiction over this petition pursuant to ***28 U.S.C. § 1254(1)***.

Federal Law Involved In This Case

This petition involves the Taking Clause in The Fifth Amendment, which was made applicable to the States through the Fourteenth Amendment. The Taking Clause provides that " 'private property shall not be taken for public use without just compensation' ". The Alabama Constitution contains virtually identical wording in Article 1, § 23.

STATEMENT OF THE CASE

Joseph G. Givens, Plaintiff, was an inmate in the State of Alabama penal system from 1986 until 2002. He was incarcerated at the Decatur Work Release Center(Center), operated by the Alabama Department of Correction(ADOC), from February 17, 1994 until September 6, 2002, at which time he was released from custody. During the time the Plaintiff spent in the Center he was employed by a "free world" company, a private entity outside of the prison system. The wages, after taxes, earned by the Plaintiff were paid directly to the Center. The Center then deducted the 32.5% that the law allowed them to deduct, even though the law changed to allow 40% the Center continued deducting 32.5%, up until right before he was released when ADOC increased their part to 40%, and the remainder of the Plaintiff's wages were deposited in his "Prisoner Money on Deposit"(PMOD) bank account.

The Plaintiff was allowed to withdraw up to one hundred sixty dollars($160.00) per month to pay for expenses such as medical bills, transportation and other like expenses.

The Plaintiff could withdraw additional amounts if approved by the Center. The rest of his money remained in his PMOD account and was paid to him upon his release from custody. He was paid between fourteen thousand and fifteen thousand dollars upon his release from custody. He used his money in his PMOD account for various expenses he was allowed to pay for and the remainder stayed in his account until he was released from custody. The amount of money he received upon his release did not include the interest earned on that money. Plaintiff never waived his right to interest on his money in the PMOD account nor was he ever given a choice or an option of putting his money in another type of account.

The PMOD accounts are keep in local banks by the different Work Release Centers through out the State of Alabama and these accounts draw interest. The interest earned on these accounts are used by respective Work Release centers through out the State of Alabama.

This case was filed on March 5, 2003. All of the summons were served by the end of March, 2003 except one was returned unexecuted. The defendants were all

represented by the same attorney. The defendants filed a motion to change venue from the Northern District to the Middle District on April 8, 2003. The Trial Court issued an order to show cause in writing by April 25, 2003 why defendants' motion should not be granted. The Defendants filed their answer on April 9, 2003 and filed an amended answer on April 24, 2003. The Plaintiff filed an objection to the Defendants' motion for change of venue on April 25, 2003.

The Trial Court issued an order on April 29, 2003 for both parties to file a brief on the matter of venue and whether the complaint stated a claim upon which the court could grant relief, concerning the 5th Amendment issue in light of ***Hatfield v. Scott***, 306 F.3d 223(5th Cir. 2003), by May 13, 2003.Both parties filed their briefs on May 13, 2003 and the Plaintiff filed a reply brief on May 20, 2003. The Trial Court issued its order and its memorandum opinion on July 14, 2003. App. C.

REASONS FOR GRANTING PETITION

The Eleventh Circuit affirmed the District Court ruling for three reasons.

The first reason was that there was a significant difference between the rights of an inmate and a non-inmate at common law. True, but the differences had significantly changed over the years. It is undisputed that inmates have rights under the United States Constitution and the Alabama Constitution. Inmates do not forfeit their property to the State unless the property was used to commit the crime or the property was paid for from the proceeds of the crime and then only after due process of law. The concept of inmates not having property rights has evolved and changed over the years as society has become more enlightened, but the principle "interest follows principal" has not changed.

The second reason was that the Ninth Circuit case of ***Schneider v. California Department of Correction,*** 151 F.3d 1194 (9th Circuit 1998), framed the inquiry to broadly. The Ninth Circuit reasoned, correctly that the common law did and still does favor

"interest follows principal" and that the common law of centuries past, when prisoner's property escheated to the Crown, does not apply to today's inmates. The Alabama Constitution and codified law gives property rights to all citizens and does not reduce the property rights of inmates unless so stated in the constitution or codified law.

The third reason was that Givens had a ***limited*** property right in the principal. Being limited as to how you use your property or limited access to withdraw the money does not mean that person does not have the common law right of interest follows principal, if so please explain retirement plans (401K), residential property(zoning laws) and many other types property that the government restricts the use of and yet no one would suggest that limited rights deprived the owner of the interest made from the property.

There are certain rights and privileges that a person convicted of a crime loses. All parties agree that the Plaintiff is not entitled to a job through the Work Release Program. Therefore it stands to reason that he is not entitled to earn wages, but once he has earned those wages he is entitled to the interest his money earns. The same is true with his right

to the Work Release Program, he has no right to go into the program but once he is in the program he has the right of due process before he can be removed from the program. The State may take certain rights away from a person but if the State then gives that right back to the person then there are other rights that naturally follow the right that was given back.

Alabama case law is full of cases that stand for the proposition that inmates do not lose all their rights but only have their rights diminished "by the needs and exigencies of the institutional environment". See ***Ex parte Rice***, 565 So.2d 607. 608 (Ala. 1990) quoting ***Wolff v. McDonnell***, 94 S.Ct. 2963. Working outside of the institutions would be one right that the State could diminish but once the State allows the inmate to earn money then that money along with any interest is his.

The State of Alabama has passed legislation that states how the ADOC is to pay for the programs and upkeep of the inmates in the Work Release Program. The legislature has given the ADOC the authority to deduct 40% from the gross wages of each inmate in the program. The statutes do not authorize the ADOC to keep any of the

interest earned on the PMOD accounts. To infer, that because the legislature authorized the ADOC to adopt regulations concerning the disbursement of the inmates earnings, that the ADOC can adopt regulations depriving the inmates of the interest their money earns is to disregard the legislature when the laws they passed clearly limit the money that ADOC can withhold from their earnings to 40% of the inmates earnings. To allow the State to keep the interest would be to allow them to violate the law by keeping more than 40% of the inmate's earnings.

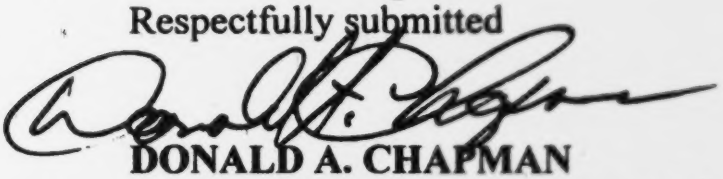
There is a split in the Circuits on the issue that the Court of Appeals' decision addresses. The Ninth Circuit follows the "interest follows principal" common law rule and applies this rule to inmates. ***Schneider v, California Department of Corrections,*** 151 F.3d 1194 (9th Cir. 1998). The Fifth Circuit ruled that there was no need to determine whether the inmate had a property right because there was no taking and the inmate waived what ever right to the interest he had by signing a waiver. ***Hatfield v. Scott,*** 306 F.3d 223 (5th Cir.2002). The Fourth Circuit ruled in ***Wahlefske v. Winston,*** 234 F.3d 179 (4th Cir.2000) that inmates had no right to work therefore the inmates had only the

property rights given to them by statute. Virginia also had a law that stated that any interest earned on the inmates money was to be used for the benefit of the general prison population. The Eleventh Circuit has now ruled in ***Joseph Givens v. Alabama Department of Corrections, et al.*** 381 F3d 1064 (11th Cir.2004) that prisoners do not have any property rights in the interest that is earned on their wages because they had no such property rights at common law and because the State of Alabama only gives the inmates limited property rights in their earned wages. App. A.

CONCLUSION

This Court should grant this petition and issue a writ of certiorari to the United States Court for the Eleventh Circuit to review its judgement in ***Joseph Givens v. Alabama Department of Corrections, et al.***

Respectfully submitted



DONALD A. CHAPMAN
ATTORNEY FOR PETITIONER
ALBANY LEGAL BUILDING
809 6TH AVENUE, SE
DECATUR, ALABAMA 35601
(256) 350-1700
(256) 350-1771 Fax
ALA. ATTORNEY CODE: CHA049

A

Briefs and Other Related Documents

United States Court of Appeals,
Eleventh Circuit.

Joseph G. GIVENS, an individual,
Plaintiff-Appellant,
v.
ALABAMA DEPARTMENT OF CORRECTIONS, Michael W. Haley, individually, et al.,
Defendants-Appellees.

No. 03-14086.

Aug. 18, 2004.

Background: Former inmate who participated in work release program brought §1983 action, alleging that Department of Corrections policy prohibiting inmates from receiving interest on wages deposited in bank accounts constituted an unlawful taking. The United States District Court for the Northern District of Alabama, No. 03-00484-CV-S-NE, C. Lynwood Smith, Jr., J., dismissed claims. Inmate appealed.

Holding: The Court of Appeals, Black, Circuit Judge, held that policy was not an unconstitutional taking, in light of fact that no property interest existed.

Affirmed.

West Headnotes

[1] **Federal Courts** ⚿776

170Bk776 Most Cited Cases

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Court of Appeals reviews the district court's dismissal of a complaint for failure to state a claim de novo.

[2] **Eminent Domain** ⚿**81.1**

148k81.1 Most Cited Cases

To state a takings claim under either federal or Alabama law, a plaintiff must first demonstrate that he possesses a property interest that is constitutionally protected; only if the plaintiff actually possesses such an interest will a reviewing court then determine whether the deprivation or reduction of that interest constitutes a taking. U.S.C.A. Const.Amend. 5; Ala.Const. Art. 1, § 23.

[3] **Eminent Domain** ⚿**81.1**

148k81.1 Most Cited Cases

The Takings Clause protects private property, rather than creating it; thus, to determine whether a particular property interest is protected, the court looks to existing rules or understandings that stem from an independent source such as state law. U.S.C.A. Const.Amend. 5.

[4] **Eminent Domain** ⚿**2.39**

148k2.39 Most Cited Cases

[4] **Eminent Domain** ⚿**81.1**

148k81.1 Most Cited Cases

Alabama's policy prohibiting inmates from receiving interest that accrued on their wages from work release deposited in bank accounts did not violate takings clause of federal or state constitutions; inmates had no common law property right in the interest and only a limited property right in the principal under Alabama law, and no property interest was created by statute, regulation, or policy.

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U.S.C.A. Const.Amend. 5; Ala.Const. Art. 1, § 23; Ala.Code 1975, § 14-8-6.

***1064** Donald A. Chapman, Decatur, AL, for Plaintiff-Appellant.

Kevin Christopher Newsom, Montgomery, AL, Andrew Weldon Redd, AL Dept. of Corrections, Montgomery, AL, for Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Alabama.

Before BLACK and KRAVITCH, Circuit Judges, and STROM [FN*], District Judge.

FN* Honorable Lyle E. Strom, United States District Judge for the District of Nebraska, sitting by designation.

***1065** BLACK, Circuit Judge:

Alabama inmates participating in work release have part of their wages deposited by the state's Department of Corrections (the Department) in bank accounts in their names. Although interest accrues on these accounts, Department policy prohibits inmates from receiving it. Appellant Joseph G. Givens, a former work release participant, filed suit under 42 U.S.C. § 1983, claiming the Department's policy violated both federal and state law. In particular, Givens argued the Department's policy constituted an unlawful taking. The district court dismissed the action for

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failure to state a claim, and we affirm.

I. BACKGROUND

Alabama statutorily authorizes the Department to adopt regulations and policies establishing a work-release program for persons incarcerated by the state. *See* Ala.Code § 14-8-2. This authority is constrained by several relevant limitations. First, any wages earned by an inmate must be paid directly to the Department. *Id.* § 14-8-6. Second, the Department may withhold part of the wages received, but the withholding cannot exceed a set percentage of the total wages earned. *Id.* Third, the remainder of an inmate's earnings--less any withdrawals made by the inmate during incarceration--must be paid to the inmate upon release. *Id.*

Pursuant to its statutory authority, the Department implemented a work release program. This program is described in Administrative Regulation No. 410, which provides that, after the Department has withheld its percentage of an inmate's earnings, [FN1] the remainder is to be deposited in a Prisoner Money on Deposit (PMOD) account in the inmate's name. Dep't of Corr. Admin. Reg. No. 410, § VII.B (Sept. 2, 1997).

FN1. At present, the Department is authorized to withhold up to 40 percent of each inmate's earnings. Ala.Code § 14-8-6. Prior to 1992, this percentage was lower.

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In Alabama, PMOD accounts are administered in accordance with the Department's *Manual of Accounting Procedures for Institutions and Community Based Facilities*, which specifically states that "inmates are not entitled to receive interest on PMOD accounts." [FN2] Ala. Dep't of Corr. Manual of Accounting Procedures for Insts. and Cmty. Based Facilities, ch. 5, at 26.

FN2. The Department uses the interest that accrues on the PMOD accounts to (1) offset the costs of administering the accounts, and (2) fund various recreational activities for the inmates.

Givens was incarcerated in Alabama from 1986 until his release in 2002. During this time, he participated in the Department's work-release program. The wages he earned were paid directly to the Department, and, after the Department withheld its percentage, the remainder was deposited in a PMOD account in his name. Upon his release, Givens was paid the amount that had been deposited in his PMOD account less the withdrawals he had made while incarcerated. In accordance with Department policy, Givens did not receive any of the interest that had accrued on his account.

Givens commenced this action against the Department and assorted state officials by filing a complaint in the Northern

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District of Alabama. Givens alleged the Department's refusal to allow him to collect the interest that had accrued on his PMOD account (1) constituted a wrongful taking under both federal and state law, and (2) violated § 14-8-35(4) of the Alabama Code, which prohibits the *1066 exploitation of inmates. The district court dismissed the takings claims, concluding Givens had no property interest in the interest on his account. The district court also dismissed the claim based on the alleged violation of § 14-8-35(4) on the ground it was simply not "cognizable." This appeal followed.

II. STANDARD OF REVIEW

[1] We review the district court's dismissal of a complaint for failure to state a claim de novo. *Behlen v. Merrill Lynch*, 311 F.3d 1087, 1090 (11th Cir.2002).

III. DISCUSSION

We are asked to decide only whether the district court erred in dismissing Givens's claims that an unlawful taking occurred. [FN3]

FN3. Givens initially claimed the Department's conduct also violated § 14-8-35(4) of the Alabama Code. Given that (1) the district court concluded this claim was not cognizable, and (2) Givens did not mention it in the

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argument section of his brief, we conclude he has abandoned it. *See* KMS Rest. Corp. v. Wendy's Int'l, Inc., 361 F.3d 1321, 1328 n. 4 (11th Cir.2004).

[2] The Takings Clause in the Fifth Amendment, which was made applicable to the States through the Fourteenth Amendment, provides that " 'private property shall not be taken for public use without just compensation.' " *Phillips v. Washington Legal Found.*, 524 U.S. 156, 163-64, 118 S.Ct. 1925, 1930, 141 L.Ed.2d 174 (1998) (quoting U.S. Const. amend. V). The Alabama Constitution contains virtually identical wording. *See* Ala. Const. art. 1, § 23. Thus, to state a Takings claim under either federal or Alabama law, a plaintiff must first demonstrate that he possesses a "property interest" that is constitutionally protected. *See* *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1000-01, 104 S.Ct. 2862, 2871, 81 L.Ed.2d 815 (1984); *Penn Cent. Transp. Co. v. New York*, 438 U.S. 104, 125, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631 (1978); *Jackson v. Birmingham Foundry & Mach. Co.*, 154 Ala. 464, 45 So. 660, 662-63 (Ala.1908). Only if the plaintiff actually possesses such an interest will a reviewing court then determine whether the deprivation or reduction of that interest constitutes a "taking." *Schneider v. California Dep't of Corr.*, 151 F.3d 1194, 1198 (9th Cir.1998).

[3] The Takings Clause

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protects private property; it does not create it. *See Phillips*, 524 U.S. at 164, 118 S.Ct. at 1930. Thus, to determine whether a particular property interest is protected, we look to "existing rules or understandings that stem from an independent source such as state law." *Id* (internal quotation marks and citation omitted); *Webb's Fabulous Pharmacies v. Beckwith*, 449 U.S. 155, 161, 101 S.Ct. 446, 451, 66 L.Ed.2d 358 (1980).

Here, Givens argues that, as an Alabama inmate, he had a property interest in the interest that accrued on his PMOD account. Given that whether an Alabama inmate possesses such a property interest is a question of first impression in this Circuit, we find it helpful to begin by setting forth the cases that shape our analysis.

A. *Relevant Precedent*

We commence by briefly mentioning two relevant Supreme Court decisions. In *Webb's Fabulous Pharmacies*, the Supreme Court held that a state violated the Takings Clause when it took for itself--pursuant to statutory authority-- the interest that accrued on an interpleader fund deposited in the registry of a county court, where a fee--prescribed by a different statute--was also charged for the clerk's services in receiving the fund into the registry. ***1067** 449 U.S. at 164, 101 S.Ct. at 452. More recently, in *Phillips*, the Court held that the interest paid on IOLTA accounts [FN4] is the property of the client. 524 U.S. at 160, 118

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S.Ct. at 1928.

FN4. *Phillips* involved a state that had adopted an Interest on Lawyers Trust Account (IOLTA) program in which certain client funds held by an attorney were deposited in bank accounts. 524 U.S. at 159-160, 118 S.Ct. at 1927-28. The interest generated was given to foundations financing legal services for low income persons. *Id.* at 160, 118 S.Ct. at 1928.

We next turn to the relevant published decisions from our sister Circuits. In *Schneider*, the Ninth Circuit held inmates have a protected property interest in the interest that accrues on their accounts, even where state statute provides otherwise. 151 F.3d at 1201. In reaching this conclusion, the Ninth Circuit relied on both *Phillips* and *Webb's Fabulous Pharmacies*. 151 F.3d at 1199. And, as did the Supreme Court, the Ninth Circuit stressed the pedigree of the common law maxim that interest should follow principal. *See id.* at 1200-01. [FN5]

FN5. The Ninth Circuit later clarified that, where a state statute establishes the interest earned on inmate accounts is to be used to cover the costs of administering them, there is no "taking" when the interest is used for that

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purpose. *See* *McIntyre v. Bayer*, 339 F.3d 1097, 1101-02 (9th Cir.2003) (concluding that there must be "net loss" to the inmate for a "taking" to have occurred). The Fifth Circuit reached the same result on similar facts in *Hatfield v. Scott*, 306 F.3d 223 (5th Cir.2002), concluding there was no need to determine whether the state statute at issue established a property interest, given that there was no "taking" and the inmate had waived whatever right to the interest he had. *Id.* at 229.

The Fourth Circuit reached the opposite result in *Washlefske v. Winston*, 234 F.3d 179 (4th Cir.2000). In that case, Virginia had directed its Department of Corrections to invest prisoner funds at its discretion and to use any interest earned for the benefit of the general prison population. *Id.* at 181. The Fourth Circuit ultimately held Virginia inmates did not have a protected property interest in the interest on their accounts. *Id.* at 185-86. In reaching this conclusion, the Fourth Circuit noted that, because inmates at common law traditionally had no right to earn wages, any rights they currently possessed extended only so far as Virginia statute or regulation provided. *Id.* at 184-86 (distinguishing *Phillips* and *Webb's Fabulous Pharmacies*). The Fourth Circuit further

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noted that, because neither statute nor regulation provided that inmates were to receive the interest on their accounts, inmates had no property right in any interest that accrued. *Id.* at 185-86. Rather, all the inmates had was a limited property right in the amounts deposited in their names--specifically, the inmates possessed the limited right to access their deposits when permitted by statute, regulation, or policy. *See id.*

B. *Analysis*

[4] Here, like the Ninth Circuit in *Schneider* and the Fourth Circuit in *Washlefske*, we are presented with a state scheme--Alabama's--that prohibits inmates from receiving the interest that accrues on their accounts. Our task is thus to determine whether an Alabama property interest is implicated--i.e., either one that existed at the time Alabama adopted the common law of England, or one that Alabama subsequently created. [FN6]

FN6. Since Alabama adopted the common law of England many years ago, *see* Ala.Code § 1-3-1 (adopting English common law to the extent it was not inconsistent with "the Constitution, laws, and institutions" of Alabama); *see also Neville v. Cheshire*, 163 Ala. 390, 50 So. 1005, 1006 (Ala.1909) (observing that the common law of Alabama is rooted in ancient English

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common law), there are two likely grounds for arguing that a particular property interest is recognized in the state: (1) the property interest existed in England at the time Alabama adopted English common law and is therefore part of Alabama law; or (2) Alabama subsequently created the property interest by--for example--enacting a statute, adopting a regulation, or implementing a policy. *See, e.g.*, *Washlefske*, 234 F.3d at 1185; *Schneider*, 151 F.3d at 1200-01.

*1068 1. *Whether a Property Interest Existed at Common Law*

We now address whether Alabama inmates have a common law property right in the interest that accrues on their accounts. *See Washlefske*, at 184-85; *Schneider*, 151 F.3d at 1200-01. Certainly, non-inmates have such a property right. *See, e.g.*, *Phillips*, 524 U.S. at 165-66 & n. 5, 118 S.Ct. at 1930-31 & n. 5 (listing cases applying the common law maxim that interest should follow principal); *Freeman v. Young*, 507 So.2d 109, 110 (Ala.Civ.App.1987) (quoting *Webb's Fabulous Pharmacies* and holding that, where one party in an interpleader action receives half of the amount deposited with the court, that party is entitled to half of the interest as well). Givens argues the interest-follows-principal

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maxim should apply to inmate accounts. We disagree for three reasons.

First, Givens's argument ignores both his status as an inmate and the fact that, at common law, such status was significant. Although non-inmates enjoyed an assortment of property rights at common law, inmates did not:

> [A]ll property is derived from society, being one of those civil rights which are conferred upon individuals, in exchange for that degree of natural freedom which every man must sacrifice when he enters into social communities. If therefore a member of any national community violates the fundamental contract of his association, by transgressing the municipal law, he forfeits his right to such privileges as he claims by that contract; and the state may very justly resume that portion of property, or any part of it, which the laws have before assigned him.

1 William Blackstone, Commentaries *299. Indeed, at common law an inmate not only did not have a property right in the product of his work in prison, but he also could be forced to forfeit all rights to personal property. *See* Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 682, 94 S.Ct. 2080, 2091, 40 L.Ed.2d 452 (1974):

> The convicted felon forfeited his chattels to the Crown and his lands escheated to his lord; the convicted traitor forfeited all of his property, real and personal, to the Crown. The basis for these forfeitures was that

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a breach of the criminal law was an offense to the King's peace, which was felt to justify denial of the right to own property.

(citations omitted); 4 William Blackstone, Commentaries *385 (explaining the extent to which a convicted felon could be forced to forfeit various property interests); *see also* United States v. Kozminski, 487 U.S. 931, 943-944, 108 S.Ct. 2751, 2760, 101 L.Ed.2d 788 (1988) (observing that requiring inmates to work without pay does not violate the Thirteenth Amendment's prohibition against involuntary servitude); Downey v. Bituminous Casualty Corp., 349 So.2d 1153, 1155 (Ala.1977) (observing that inmate labor does not have to be voluntary). Thus, under traditional common law in Alabama, an inmate had no property rights. Accordingly, we cannot accept Givens's suggestion that the common law maxim that interest follows principal applies where an inmate is involved.

Second, the only case directly on point that favors Givens is *Schneider*, and that case frames the common-law inquiry too ***1069** broadly. *See* 151 F.3d at 1200-01. Rather than merely asking whether interest followed principal at common law, *see id.*, the Ninth Circuit should have instead analyzed the extent to which inmates at common law enjoyed property rights. Because the Ninth Circuit did not do this, we are reluctant to construe *Schneider* as persuasive authority in this Circuit.

Third, as the Fourth Circuit

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noted in *Washlefske*, the Supreme Court's holdings in *Phillips* and *Webb's Fabulous Pharmacies*--on which Givens relies--*assumed* that a *complete* private property right existed in the principal:

> The holding in *Phillips*, as well as that in *Webb's Fabulous Pharmacies*, *assumes* that the claimants had a traditional private property right in the principal and concludes only that, as an incident to that ownership, the claimants also had a property right in the interest. *See Phillips*, 524 U.S. at 164, 118 S.Ct. 1925, 141 L.Ed.2d 174 (noting its assumption that clients' funds deposited in attorneys' trust accounts remained "freely available to the clients upon demand"); *Webb's Fabulous Pharmacies*, 449 U.S. at 160, 101 S.Ct. 446, 66 L.Ed.2d 358 (beginning its analysis with the observation that the "principal sum deposited in the registry of the law plainly was private property").

234 F.3d at 185. By contrast, in this case, Givens has at most a *limited* property right in the principal. Like the inmate in *Washlefske*, Givens is not free to receive the amounts deposited in cash, make withdrawals whenever he wants, or spend money without the Department's approval. *See id.*; Ala.Code § 14-8-6 (limiting the extent of an Alabama inmate's property interest in his earnings); Dep't of Corrs. Admin. Reg. No. 410, § VII (Sept. 2, 1997) (same). Thus, in regards to his interest-bearing account,

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Givens lacks the full rights of "possession, control, and disposition" a non-inmate would enjoy. *See* Phillips, 524 U.S. at 170, 118 S.Ct. at 1933. Therefore, neither *Phillips* nor *Webb's Fabulous Pharmacies* stand for the proposition that Givens has the same right as a non-inmate to receive interest.

For these reasons, we conclude Alabama inmates do not have a common law property right to the interest that accrues on their accounts.

2. *Whether Alabama Created a Property Interest by Enacting a Statute, Adopting a Regulation, or Implementing a Policy*

Although common law does not vest Givens with a property interest in the interest on his account, Alabama could still have created a property interest by enacting a statute, adopting a regulation or implementing a policy. *See Tellis v. Godinez*, 5 F.3d 1314, 1316-17 (9th Cir.1993) (holding that because Nevada statute provided that the state's inmates were entitled to the interest on their accounts, the inmates had a property interest in any interest that accrued); *see also Washlefske*, 234 F.3d at 185 (stating that if no right existed at English common law, a state may subsequently create one); *Schneider*, 151 F.3d at 1200-01 (noting same but also commenting that, in doing so, a state may not encroach upon "traditional 'old property' interests"). In this case, however, we conclude Alabama created no such property interest.

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So far as inmates of the state are concerned, §§ 14-8-1 to 14-8-10 of the Alabama Code are the only statutory provisions that bear on work release. None of these sections mention interest. The only provision even tangentially related is § 14-8-6, which provides:

> The employer of an inmate involved in work release shall pay the inmate's *1070 wages directly to the Department of Corrections. The department may adopt regulations concerning the disbursement of any earnings of the inmates involved in work release. The department is authorized to withhold from an inmate's earnings the cost incident to the inmate's confinement as the department shall deem appropriate and reasonable. *In no event shall the withheld earnings exceed 40 percent of the earnings of the inmate.* After all expenses have been deducted by the department, the remainder of the inmate's earnings shall be credited to his or her account with the department. Upon his or her release all moneys being held by the department shall be paid over to the inmate.

Ala.Code § 14-8-6 (emphasis added). The only property interest this provision could be said to provide an inmate is a limited property interest in the *amount of his wages* that remains after the Department has deducted a portion that is (1) "appropriate and reasonable," and (2) not in excess of 40% of the total *wages* earned. *See id.* In short, the Alabama statutes are silent as to what is to

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become of any interest earned. Alabama statutory law thus does not vest Givens with a property interest in the interest that accrues on his account. *See Washlefske*, 234 F.3d at 185 (noting that, where a state statute creates a property right, the right extends only so far as the statute expressly provides).

We next consider whether Alabama regulation or policy vests inmates with a property right in the interest earned on their accounts. Given that the relevant regulation is silent regarding interest, *see* Dep't of Corrs. Admin. Reg. No. 410 (Sept. 2, 1997), and Department policy provides that inmates are *not* to receive any such interest, Ala. Dep't of Corr. Manual of Accounting Procedures for Insts. and Cmty. Based Facilities, ch. 5, at 26, we conclude that neither regulation nor policy vests Alabama inmates with such a right either.

In sum, we conclude Alabama has not created a property interest for its inmates in the interest that accrues on their accounts.

IV. CONCLUSION

For the foregoing reasons, we conclude that, at common law, Alabama inmates do not have a property interest in the interest that accrues on their accounts. We further conclude Alabama has not created such an interest via statute, regulation, or policy. Accordingly, no recognized property interest is implicated here, and, absent such an interest, there is no "taking."

AFFIRMED.

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381 F.3d 1064, 17 Fla. L. Weekly Fed. C 933

Briefs and Other Related Documents

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- 03-14086 (Docket)

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B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
OCT 07 2004
THOMAS K. Kahn
CLERK

No. 03-14086-AA

JOSEPH G. GIVENS, an individual,

Plaintiff-Appellant,

versus

ALABAMA DEPARTMENT OF CORRECTIONS,
MICHAEL W. HALEY,
individually,
BELTINA CARTER,
individually and in her official capacity, CHARLES HADLEY,
individually and in his official capacity, DONAL CAMPBELL,
in his official capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

BEFORE: BLACK and KRAVITCH, Circuit Judges, and STROM*, District Judge.

PER CURIAM:

The petition(s) for rehearing filed by Appellant is DENIED.

ENTERED FOR THE COURT:

S/ BLACK
UNITED STATES CIRCUIT JUDGE

C

FILED
03 JUL 14 PM 3: 45

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

JOSEPH G. GIVENS,
Plaintiff,

vs.

ALABAMA DEPARTMENT OF CORRECTIONS, *et al*,
Defendants.

Civil Action No. CV-03-S-0484-NE

ENTERED JUL 1 4 2003

MEMORANDUM OPINION

Plaintiff, Joseph G. Givens, is a former prisoner of the Alabama Department of Corrections ("ADOC"). He was incarcerated at the Decatur Work Release Center, a community-based facility operated by ADOC, from February 17, 1994 until September 6, 2002, when he was released[1]. During his assignment to that work-release facility, Givens was employed by a private entity, and the wages paid by his employer were deposited into a Prisoner Money on Deposit bank account ("PMOD") controlled by ADOC.[2] Plaintiff commenced this action by filing a "Class Action Complaint." No class has been certified, however. The gravamen of plaintiff's complaint is that he and other ADOC work release inmates were not paid interest on funds deposited in PMOD accounts, in violation of federal and state laws.[3] Defendants subsequently filed a motion to transfer this action

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[1] *See* answer (doc. No. 9) ¶ 1, and, defendant's brief (doc. No. 14), at 2

[2] Complaint ¶ 4.

[3] *Id*

to the United States District Court for the Middle District of Alabama (doc. no. 7). After considering that motion, the court had cause to question whether plaintiff has stated a claim upon which relief can be granted. Consequently, the court ordered the parties to submit briefs addressing whether ADOC's failure to pay interest on funds deposited in PMOD accounts constitutes a violation of federal or state laws.[4] Both parties submitted briefs and evidentiary materials, and this issue now is ripe for adjudication.

The parties agree that a convict does not have a constitutional right to work for pay while incarcerated.[5] Even so, Alabama law provides a limited privilege for eligible state prisoners to earn and save money during their incarceration. *See* Ala. Code §§ 14-8-1 to -10 *(1975)* (1995 Replacement Vol). A participant does not have unfettered access to his wages, however. Rather, Alabama law specifies that

> [t]he employer of an inmate involved in work release shall pay the inmate's wage directly to the Department of Corrections. *The department may adopt regulations concerning the disbursement of any earnings of the inmates involved in work release. The department is authorized to withhold from an inmate's earnings the cost incident to the inmate's confinement as the department shall deem appropriate and reasonable. In no event shall the withheld earnings exceed 40 percent of the earnings of the inmate,* After all expenses have been deducted by the department, the remainder of the inmate' s earnings shall be credited to his or her account with the department. Upon his or her release all moneys being held by the department shall be paid over to the inmate.

Ala. Code §§ 14-8-6 (emphasis supplied). ADOC's "Manual of Accounting Procedures for

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[4] *See* doc. No. 12 (order entered April 29, 2003).

[5] Plaintiff's reply brief, at unnumbered page 2.

Institutions and Community Based Facilities" sets forth the State's policy regarding the disposition of interest accrued on the funds deposited in PMOD accounts:

> It is the position of the Department that inmates are not entitled to receive interest on PMOD accounts. The Department maintains the PMOD accounts as a convenience for the inmates. In doing so, considerable costs are incurred. However, no service fees are imposed to offset any of those costs. *Interest earned on the PMOD funds serves to defray at least a portion of the costs.*[6]

Plaintiff does not consider the manual to be a dispositive "regulation."[7] He observes that "[t]he State of Alabama has not mentioned the interest on these accounts in any of its regulations or code sections."[8] Plaintiff argues that, in the absence of any regulation or statute providing that interest on a PMOD account shall not be paid, a prisoner should be given the benefit of the common law presumption that "interest follows principal."[9]

Plaintiff's theory is unconvincing for at least two reasons. First, the common-law presumption that "interest follows principal" was developed in the context of ordinary banking transactions, and is not controlling in the situation at hand. Plaintiff is not a typical depositor, but a prisoner permitted to earn and save

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[6] Defendant's evidentiary submissions, Exhibit 4 (ADOC Accounting Procedures Manual), at 5-13 (emphasis supplied).

[7] The term "regulation" is not included in the "definitions" section of the relevant part of the Alabama Code. *See* Ala. Code § 14-8-1 (1995 Replacement Vol.) A generally-accepted definition, as the term "regulation" is employed here, is "[a] rule or order, having legal force, issued by an administrative agency or local government." *Black's Law Dictionary* 1289 (7th ed. 1999).

[8] Plaintiff's brief, at unnumbered page 3.

[9] *Id.* at 3-4.

money pursuant to a statutory privilege. Second, because the privilege to deposit funds in PMOD accounts is created by statute, the rights ancillary to that privilege also are governed by statute. In other words, in the absence of a statutory or regulatory provision providing otherwise, there is no basis for inferring that the award of a limited privilege confers with it the benefit of all of the presumptions that are typically associated with the privilege's common-law, banking analog. *See, e.g., Washlefske v. Winston,* 234 F.3d 179, 185-86 (4th Cir.2000) ("Because Washlefske never had a private property interest in these accounts as defined by common law, but only an interest defined by statute - a statute that gives him limited rights to those funds- he cannot claim that a property interest based on traditional principles of property law was taken."). *But see Schneider v. California Department of Corrections,* 151 F.3d 1194, 1201 (9thCir.1998) (holding that prisoners have a protected property interest in the interest earned on personal funds deposited into an inmate trust account).

Another judge of this court has held that a prisoner's claim for interest accrued on wages deposited into a work release program account is not viable.

> Prisoners have no constitutional right to employment nor to earn wages while incarcerated. Under the provisions of §§ 14-8-1 Code of Alabama 1975, *et seq.,* prisoners may be granted this privilege. The same Act which grants the privilege provides that, "After all expenses have been deducted by the board, the remainder of the inmate's earnings shall be credited to his account with the board. Upon his release all moneys being held by the board shall be paid over to the inmate." §§ 14-86 Code of Alabama 1975. No statutory provision is made for interest. The board is further authorized to adopt regulations concerning the disbursement of earnings. There is no statutory right to interest on such earnings. The court does not deem there to be a constitutional right to interest on earnings which are allowed by permission of statute. Forced 'labor by prisoners even without pay does not

> violate the Thirteenth Amendment.. .. There is no allegation that plaintiff has ever been promised that he would be paid interest. The "denial of interest" claim does not state a cause of action.

Turner v. *Bowen,* No. CV82-PT-2566-S, slip op. at 1-2 (N.D. Ala. Feb. 25,1983) (Propst, J.) (some citations omitted), *aff'd on other grounds,* 726 F.2d 753 (11th Cir. 1984) (Table).

This court holds that plaintiff's claim to interest on funds deposited in ADOC PMOD accounts, whether derived from the United States Constitution, the Alabama Constitution of 1901, Alabama Code § 14-8-35(4),[10] or common-law principles, is not cognizable.[11] Accordingly, all of plaintiff's claims are due to be dismissed. An appropriate order will be entered contemporaneously herewith.

DONE this 14th day of July, 2003.

s/Lynnwood Smith
United States District Judge

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[10] The cite section provides, in pertinent part, that the "[e]xplotation of eligible prisoners in any form is prohibited." Ala. Code § 14-8-35(4) (1995 Replacement Vol.)

[11] Plaintiff's claims that defendants' failure to "insure that the PMOD account was placed into an FDIC insured Alabama bank un an interest account" violates the Fifth Amendment of the United States Constitution and Article I, Section 23, of the Alabama Constitution of 1901, are similarly unsupported. *See* Complaint ¶¶ 18, 20. Notably, defendants assert that each PMOD account is, in fact, maintained in a "local FDIC insured bank." Answer ¶ 16.

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Supreme Court, U.S.
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No. 04-1238

In the
Supreme Court of the United States

JOSEPH G. GIVENS,
Petitioner,

v.

ALABAMA DEPARTMENT OF CORRECTIONS,
MICHAEL W. HALEY, et al.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

BRIEF IN RESPONSE TO PETITION

Troy King
Attorney General

Kevin C. Newsom
Solicitor General
Counsel of Record

STATE OF ALABAMA
Office of the Attorney General
11 South Union Street
Montgomery, Alabama 36130
(334) 242-7401

May 3, 2005

QUESTION PRESENTED

Whether, for Takings Clause purposes, a state prisoner has a constitutionally protected property right in the interest that accrues on work-release earnings deposited into his prison trust account.

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RELEVANT CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS

1. In relevant part, the Fifth Amendment to the United States Constitution provides as follows:

> ... [N]or shall private property be taken for public use, without just compensation.

U.S. Const. amend. V.

2. Section 14-8-6 of the Alabama Code provides as follows:

> **§ 14-8-6. Disposition of earnings.**
>
> The employer of an inmate involved in work release shall pay the inmate's wages directly to the Department of Corrections. The department may adopt regulations concerning the disbursement of any earnings of the inmates involved in work release. The department is authorized to withhold from an inmate's earnings the cost incident to the inmate's confinement as the department shall deem appropriate and reasonable. In no event shall the withheld earnings exceed 40 percent of the earnings of the inmate. After all expenses have been deducted by the department, the remainder of the inmate's earnings shall be credited to his or her account with the department. Upon his or her release all moneys being held by the department shall be paid over to the inmate.

Ala. Code §14-8-6.

3. In relevant part, State of Alabama Department of Corrections Administrative Regulation No. 410, "Work Release: Organization and Function," provides as follows:

> As authorized by statute, thirty-two and one-half percent (32½%)[1] of work releasees' gross earnings will be deducted by the Department of Corrections to assist in defraying the cost of his/her incarceration. The balance will be credited to the work releasee's Prisoners Money on Deposit (PMOD) account. A receipt will be issued showing the amount of deductions and the balance credited to the work releasee's account. When restitution, court costs, or attorney fees have been ordered by the sentencing judge as indicated on the sentencing transcript, the work release participant may be required to make incremental payments towards the sum so ordered. Child support may also be paid if ordered by the court.

State of Alabama Department of Corrections, Admin. Reg. No. 410, §VII.B. (Sept. 2, 1997).

4. In relevant part, the Department of Corrections' *Manual of Accounting Procedures* provides as follows:

> It is the position of the Department that inmates are not entitled to receive interest on PMOD accounts. The Department maintains the PMOD accounts as a convenience for the inmates. In doing so, considerable costs are incurred. However, no service fees are imposed to offset any of those costs. Interest earned on the PMOD funds serves to defray at least a portion of the costs.

State of Alabama Department of Corrections, *Manual of Accounting Procedures for Institutions and Community Based Facilities* p. 5-13 (June 2001).

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[1] Since March 2001, the designated percentage has been 40%, in accordance with Ala. Code §14-8-6, *supra*.

STATEMENT OF THE CASE

The Eleventh Circuit's opinion (Pet. App. A) states the case as follows:

> Alabama inmates participating in work release have part of their wages deposited by the state's Department of Corrections (the Department) in bank accounts in their names. Although interest accrues on these accounts, Department policy prohibits inmates from receiving it. Appellant Joseph G. Givens, a former work release participant, filed suit under 42 U.S.C. § 1983, claiming the Department's policy violated both federal and state law. In particular, Givens argued the Department's policy constituted an unlawful taking. ... .
>
> * * *
>
> Alabama statutorily authorizes the Department to adopt regulations and policies establishing a work-release program for persons incarcerated by the state. *See* Ala. Code § 14-8-2. This authority is constrained by several relevant limitations. First, any wages earned by an inmate must be paid directly to the Department. *Id.* § 14-8-6. Second, the Department may withhold part of the wages received, but the withholding cannot exceed a set percentage of the total wages earned. *Id.* Third, the remainder of an inmate's earnings—less any withdrawals made by the inmate during incarceration—must be paid to the inmate upon release. *Id.*
>
> Pursuant to its statutory authority, the Department implemented a work release program. This program is described in Administrative

Regulation No. 410, which provides that, after the Department has withheld its percentage of an inmate's earnings,* the remainder is to be deposited in a Prisoner Money on Deposit (PMOD) account in the inmate's name. Dep't of Corr. Admin. Reg. No. 410, § VII.B (Sept. 2, 1997).

In Alabama, PMOD accounts are administered in accordance with the Department's *Manual of Accounting Procedures for Institutions and Community Based Facilities,* which specifically states that "inmates are not entitled to receive interest on PMOD accounts." ** Ala. Dep't of Corr. Manual of Accounting Procedures for Insts. and Cmty. Based Facilities, ch. 5, at 26.

Givens was incarcerated in Alabama from 1986 until his release in 2002. During this time, he participated in the Department's work-release program. The wages he earned were paid directly to the Department, and, after the Department withheld its percentage, the remainder was deposited in a PMOD account in his name. Upon his release, Givens was paid the amount that had been deposited in his PMOD account less the withdrawals he had made while incarcerated. In accordance with Department policy, Givens did not receive any of the interest that had accrued on his account.

---

* At present, the Department is authorized to withhold up to 40 percent of each inmate's earnings. Ala. Code § 14-8-6. Prior to 1992, this percentage was lower.

** The Department uses the interest that accrues on the PMOD accounts to (1) offset the costs of administering the accounts, and (2) fund various recreational activities for the inmates.

> Givens commenced this action against the Department and assorted state officials by filing a complaint in the Northern District of Alabama. Givens alleged the Department's refusal to allow him to collect the interest that had accrued on his PMOD account (1) constituted a wrongful taking under both federal and state law, and (2) violated § 14-8-35(4) of the Alabama Code, which prohibits the exploitation of inmates. The district court dismissed the takings claims, concluding Givens had no property interest in the interest on his account. The district court also dismissed the claim based on the alleged violation of § 14-8-35(4) on the ground it was simply not "cognizable."

Givens v. Alabama Department of Corr., 381 F.3d 1064, 1065-66 (11th Cir. 2004).

The Eleventh Circuit affirmed. As an initial matter, the court of appeals reiterated the baseline principles (i) that to state a claim under the Takings Clause "a plaintiff must first demonstrate that he possesses a 'property interest' that is constitutionally protected," *id.* at 1066; and (ii) that because the Takings Clause protects, but does not create, private property, "to determine whether a particular property interest is protected [courts] look to 'existing rules or understandings that stem from an independent source such as state law,'" *id.* (quoting *Phillips v. Washington Legal Found.*, 524 U.S. 156, 164 (1998) (internal quotation marks and citations omitted)).

Against that backdrop, the Eleventh Circuit canvassed the decisions that "shape[d its] analysis." *Id.* First, it pointed to this Court's decisions in *Webb's Fabulous Pharmacies v. Beckwith*, 449 U.S. 155 (1980), and *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998). In *Webb's*, this Court invalidated on Takings Clause grounds a state statute that appropriated interest

accruing on interpleader funds deposited into the registries of county courts. 449 U.S. at 452. More recently, in *Phillips*, the Court held that for Takings Clause purposes the interest accruing on a lawyer's IOLTA account is the private property of the client. 524 U.S. at 160.

The Eleventh Circuit next turned to the various decisions in the courts of appeals applying *Webb's* and *Phillips*—and the "interest follows principal" rule that underlies them—in the prison setting. 381 F.3d at 1067. The court first noted the Ninth Circuit's holding that "inmates have a protected property interest that accrues on their accounts, even where state statute provides otherwise." *Id.* (citing *Schneider v. California Department of Corr.*, 151 F.3d 1194, 1201 (9th Cir. 1998)).[2] In so concluding, the court below observed, the Ninth Circuit relied on both *Webb's* and *Phillips* and "stressed the pedigree of the common law maxim that interest should follow principal." *Id.* (citing *Schneider*, 151 F.3d at 1199-1201).

As the Eleventh Circuit next reported, the Fourth Circuit has "reached the opposite result." *Id.* (citing *Washlefske v. Winston*, 234 F.3d 179 (4th Cir. 2000), *cert. denied*, 532 U.S. 983 (2001)). In holding that inmates have no protected property right in the interest that accrues on their prison accounts, the Fourth Circuit distinguished *Webb's* and *Phillips* on the ground (as

---

[2] As the Eleventh Circuit observed, the Ninth Circuit has clarified that, at least where the interest earned on inmate accounts is used to defray the costs of administering the accounts themselves, the appropriation may be upheld as a valid user fee, and the Fifth Circuit has concluded likewise without addressing the "property interest" issue. 381 F.3d at 1067 n.5 (citing *McIntyre v. Bayer*, 339 F.3d 1097, 1101-02 (9th Cir. 2003), and *Hatfield v. Scott*, 306 F.3d 223, 229 (5th Cir. 2002)).

summarized by the court below) that unlike private investors, "inmates at common law traditionally had no right to earn wages." *Id.* (citing *Washlefske*, 234 F.3d at 184-86). Accordingly, the Fourth Circuit held, any rights that inmates have in their work-release deposits—and, accordingly, any interest accrued on those deposits—extend only so far as state law provides. *Id.*

Turning to the case before it, the Eleventh Circuit observed that "[h]ere, like the Ninth Circuit in *Schneider* and the Fourth Circuit in *Washlefske*, we are presented with a state scheme ... that prohibits inmates from receiving the interest that accrues on their accounts." *Id.* The Eleventh Circuit sided with the Fourth, and against the Ninth, in concluding that, absent some state law creating one, inmates have no constitutionally protected property right in interest that accrues on prison accounts.

The Eleventh Circuit started with the question whether inmates have "a common law property right in the interest that accrues on their accounts." *Id.* at 1068. Citing this Court's decision in *Phillips*, which "list[s] cases applying the common law maxim that interest should follow principal," the Eleventh Circuit acknowledged that "[c]ertainly, non-inmates have such a property right." *Id.* But with respect to Givens' contention that the interest-follows-principal rule should apply equally to inmate accounts, the Eleventh Circuit "disagree[d] for three reasons." *Id.*

First, the court observed, "[a]lthough non-inmates enjoyed an assortment of property rights at common law, inmates did not." *Id.* (citing, *e.g.*, 1 William Blackstone, *Commentaries* *299, and *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 682 (1974)). Second, the Eleventh Circuit said that "the only case directly on point that favors Givens"—the Ninth Circuit's decision in *Schneider*—"frames the common-law inquiry too broadly."

Id. at 1068-69. "Rather than merely asking whether interest followed principal at common law," the Eleventh Circuit concluded, "the Ninth Circuit should have instead analyzed the extent to which inmates at common law enjoyed property rights." *Id.* at 1069. Because the Ninth Circuit "did not do this," the Eleventh Circuit refused to follow *Schneider*. Finally, citing the Fourth Circuit's decision in *Washlefske*, the Eleventh Circuit emphasized that this Court's "holdings in *Phillips* and *Webb's Fabulous Pharmacies*—on which Givens relies—*assumed* that a *complete* property right existed in the principal." *Id.* (emphasis in original). By contrast, the Eleventh Circuit held, because Givens "is not free to receive the amounts deposited in cash, make withdrawals whenever he wants, or spend money without the [Department of Corrections'] approval," he lacks "the full rights of 'possession, control, and disposition' a non-inmate would enjoy." *Id.* (quoting *Phillips*, 524 U.S. at 170).

Having concluded that Givens possessed no common-law property right in the interest that had accrued on his account, the Eleventh Circuit went on to hold that Alabama positive law had not created a protected property interest. The court observed that the only relevant state statute, Ala. Code §14-8-6, is "silent as to what is to become of any interest earned." 381 F.3d at 1070. The relevant regulation, too, the court noted, is "silent regarding interest." *Id.* (citing Dep't of Corr. Admin. Reg. No. 410 (Sept. 2, 1997). Finally, the court emphasized, the Department's accounting manual expressly "provides that inmates are *not* to receive any such interest." *Id.* (citing Ala. Dep't of Corr. Manual of Accounting Procedures for Insts. and Cmty. Based Facilities, ch. 5, at 26) (emphasis added). Accordingly, the Eleventh Circuit held, neither statute nor regulation nor official policy "vests Alabama inmates" with a protected property interest. *Id.*

Because it found that "no recognized property interest is implicated here," the Eleventh Circuit held that there could be no compensable taking. *Id.*

Givens sought panel rehearing, which was denied. *See* Pet. App. B. His petition to this Court followed.

ARGUMENT

The State cannot and does not deny that there are aspects of this case—acknowledged and explained below—that make it a logical candidate for certiorari. In lieu of the usual statement of "reasons for denying the petition," the State offers the following comprehensive description of the legal backdrop against which this case arises.

1. *The Circuit Split.* To begin with, we must acknowledge that there is, as the petition says, "a split in the Circuits on the issue that the Court of Appeals' decision addresses." Pet. at 9. As detailed below, the Fourth, Tenth, and (now) Eleventh have all held—correctly, in our view—that prison inmates have no constitutionally protected property rights in the interest that accrues on their inmate bank accounts. The Ninth Circuit, to the contrary, has held squarely that inmates *do* have a protected property rights in accrued interest. Moreover, since the petition was filed, it has become increasingly clear that the circuit conflict is not merely academic. In one recent case, for instance, a federal magistrate judge "not[ed] ... a split in the circuits as to whether the interest generated from the investment of prisoner wages constitutes private property for purposes of the Takings Clause" and, following the Ninth Circuit's approach to that question, answered in the affirmative. *Young v. Wall*, No. 03-220S, 359 F. Supp. 2d 84, 92 (D.R.I. 2005). On review of the magistrate's decision, the district

court judge noted the same circuit split but agreed instead with what it perceived to be the "more persuasive" decisions of the Fourth and Eleventh Circuits. *Id.*

A description of the split—and the legal landscape more generally—follows:

a. In *Schneider v. California Department of Corrections*, the Ninth Circuit relied on this Court's decisions in *Webb's v. Fabulous Pharmacies*, 449 U.S. 155 (1980), and *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998), to hold that prison inmates have a constitutionally protected property right to the interest that accrues on their prison accounts. 151 F.3d 1194, 1199 (9th Cir. 1998). In particular, the Ninth Circuit pointed to this Court's statements in *Phillips* that the "interest follows principal" rule "'has been established under English common law since at least the mid-1700's'" and "'has become firmly embedded in the law of the various States.'" *Id.* at 1200 (quoting *Phillips*, 524 U.S. at 165 & n.5). In the light of the rule's "common law pedigree" and "near-universal endorsement by American courts," the Ninth Circuit had "little doubt" that interest on a prisoner's trust account "is sufficiently fundamental that States may not appropriate it without implicating the Takings Clause." *Id.* at 1201.

b. In *Washlefske v. Winston*, the Fourth Circuit "reach[ed] a different result from that reached by the Ninth Circuit ...." 234 F.3d 179, 186 (4th Cir. 2000), *cert. denied*, 532 U.S. 983 (2001). It concluded that inmates do not have any constitutionally protected property rights in the *interest* that accrues on work-release earnings in their prison accounts because inmates, unlike free-world investors, do not have unencumbered rights to the underlying *principal* in those accounts. After describing the State of Virginia's inmate work-release programs, the court emphasized that "[a]lthough private citizens

ordinarily have a constitutionally protected property interest in the wages earned from their labor under employment contracts, inmates do not." *Id.* at 184 (internal citations omitted). "Indeed," the Fourth Circuit said, "at common law a convicted felon not only did not have a property right in the product of his work in prison, but he also forfeited all rights to personal property." *Id.* at 185 (citing Blackstone's *Commentaries* and *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 682 (1974)). And because an inmate has no property interest in the work-release deposits in his prison account, the court held, "nor is he entitled to the interest or other income earned from them." *Id.*

Notably, the Fourth Circuit did not believe that *Webb's* or *Phillips* dictated a contrary result. By contrast, the court said, "[t]he holding in *Phillips*, as well as that in *Webb's Fabulous Pharmacies*, *assumes* that the claimants had a traditional private property right in the principal and concludes only that, as an incident to that ownership, the claimants also had a property right in the interest." *Id.* (emphasis in original). The Fourth Circuit faulted the Ninth Circuit's analysis for failing, as an antecedent matter, to "determin[e] who 'owned' the principal and to what extent." *Id.* at 186.

c. The Eleventh Circuit here, whose decision we have described at length, *see supra* at 5-8, likewise rejected the Ninth Circuit's analysis as having "fram[ed] the common-law inquiry too broadly." 381 F.3d at 1068-69. "Rather than merely asking whether interest followed principal at common law," the Eleventh Circuit held, "the Ninth Circuit should have instead analyzed the extent to which inmates at common law enjoyed property rights." *Id.* at 1069. And like the Fourth Circuit, the Eleventh Circuit found this Court's decisions in *Webb's* and *Phillips* to be distinguishable. Echoing the Fourth Circuit's decision,

the Eleventh Circuit observed that "*Phillips* and *Webb's Fabulous Pharmacies*—on which Givens relies—assumed that a complete private property right existed in the principal." *Id.* Because, as a prisoner, Givens had only a "limited property right in the principal" in his account, the Eleventh Circuit concluded that he could not avail himself of the usual interest-follows-principal rule. *See id.*

d. Although not mentioned in the petition, we should point out that the Tenth Circuit, too—albeit in an unpublished opinion and without significant analysis—has weighed in on the question presented. In a decision that pre-dates the Ninth Circuit's decision in *Schneider*, the Tenth Circuit held that a prisoner had "no constitutionally protected property interest in interest earned on funds in his statutory draw or mandatory savings accounts." *Petrick v. Fields*, 103 F.3d 145, 1996 WL 699706, at *1 (10th Cir. Dec. 6, 1996).

e. Finally, we note for the record that several other courts—state and federal alike—while not expressly joining issue on the question presented here, have made statements that would seem to indicate uncertainty as to its proper resolution. *See, e.g., Jeffries v. Tennessee Dep't of Corrections*, 108 S.W.3d 862, 872 n.10 (Tenn. Ct. App. 2002) (citing *Schneider*, distinguishing *Washlefske*, and concluding "that the better reasoned position is that prisoners have a property interest in the funds in their inmate trust accounts"); *Reynolds v. Wagner*, 128 F.3d 166 (3d Cir. 1997) (noting, in context of due process challenge to program under which prisoners were charged nominal fee for health care, that "[i]nmates have a property interest in funds held in prison accounts"); *Hampton v. Hobbs*, 106 F.3d 1281, 1287 (6th Cir. 1997) (noting, in context of due process challenge to PLRA fee provisions, that inmate has "protected property interest

in the funds in his prisoner trust account"); *Campbell v. Miller*, 787 F.2d 217, 222 (7th Cir. 1986) (noting, in passing, that prisoner "has a property interest in the funds on deposit in his prison account").

2. *This Court's Decisions.* In addition to the fact of a circuit split, we must also acknowledge that the split appears to have developed as a result of various courts' divergent interpretations of this Court's own decisions in *Webb's* and *Phillips*. The Ninth Circuit, for its part, apparently believed that *Webb's* and *Phillips* essentially compelled the conclusion that prison inmates have a protected property right in accrued interest. *See Schneider*, 151 F.3d at 1199-1200 (repeatedly citing *Webb's* and *Phillips* to support its decision). By contrast, the Fourth and Eleventh Circuits (correctly in our view) concluded that *Webb's* and *Phillips*—and, particularly, those decisions' reliance on the common-law interest-follows-principal rule—could not be stretched to cover prison inmates, whose property rights in the underlying principal are limited. *See Washlefske*, 234 F.3d at 185; *Givens*, 381 F.3d at 1069. Given the circumstances, this Court may perceive a need to clarify confusion concerning the meaning and scope of *Webb's* and *Phillips*.

3. *Practical Implications.* Finally, we must acknowledge that the question presented here—whether or not state corrections officials may take and use the interest that accrues on inmates' prison accounts—has important practical implications for the States. As an initial matter, our own (admittedly very informal) survey of corrections officials indicates that there are a number of States—including several of the nine western States laboring under the Ninth Circuit's decision in *Schneider*—that, like Alabama, do not pay to inmates the interest that accrues on prison trust accounts but, instead, use

that interest in various ways to defray the costs of incarceration.

Furthermore, the amount of money at stake—at least from the States' perspective—is not insignificant. Public records in Alabama, for instance, reflect that during the last five fiscal years, state prisoners have earned between $8.38 million and $16.51 million per year in work-release salaries. During those same five years, inmates' PMOD accounts have generated between $19,154 and $142,421 in interest annually—which, pursuant to policy, the Department of Corrections has used for prison-administration purposes. *See* Department of Corrections, Combining Statement of Rev., Expend., and Changes in Fund Balance (Sept. 30, 2000-Sept. 30, 2004). Thus, whereas the interest that a particular inmate's trust account generates may be insignificant when viewed in isolation, the interest earned on all accounts, when pooled, provides a meaningful additional funding source for often cash-strapped state prison systems.

4. *Vehicle Issues.* In the event that the Court perceives a need to settle the existing circuit conflict, *see* Sup. Ct. R. 10(a), or to clarify the meaning (or mark the limits) of its own decisions in *Webb's* and *Phillips*, *cf.* Sup. Ct. R. 10(c), we have no reason to believe that this case would not provide an appropriate vehicle for doing so. As an initial matter, we are not aware of (nor have we to this point urged) any jurisdictional obstacles that might preclude review of the merits. Moreover, this case was decided in the trial court and the Eleventh Circuit at an early stage in the proceedings (essentially, on summary judgment) and on a limited record—consisting, at bottom, of (i) various state statutes and regulations; (ii) several Department of Corrections manuals and forms; and (iii) a handful of affidavits. *See* C.A. App. Tab 14 pp.6-80, Tab 15 pp.6-28. Finally, it is worth noting that, in the event

the Court does wish to address the property-interest issue, it will likely need to do so in a case that arises in the current posture—that is, with a court of appeals having concluded that no property interest exists and, on that basis, having finally disposed of the Takings Clause claim. Decisions going the other way (like *Schneider*) typically will have been remanded to the trial court for resolution of the logically subsequent takings and just-compensation issues, and thus will not be final. *See* R. Stern, E. Gressman, et al., *Supreme Court Practice* §4.18, at 258 (8th ed. 2002) (Court ordinarily will not grant certiorari to review non-final federal-court decisions).

5. *Contrary Considerations.* Having outlined the various reasons why certiorari might be appropriate here, we note in closing three considerations that arguably weigh against a grant of certiorari. First, this Court denied the petition in *Washlefske*, which, presumably, presented the same issue. *See* 532 U.S. 983 (2001). Second, an adverse ruling on the property-interest issue may not always result in a loss for a State in the final analysis; at least where, as in some States, interest is used "to pay for the cost of administering" the inmates' accounts themselves, it may be (even assuming the existence of a protected property right) that an appropriation could be upheld as a valid user fee. *Hatfield v. Scott*, 306 F.3d 223, 229 (5th Cir. 2002); *see also Vance v. Barrett*, 345 F.3d 1083, 1089 (9th Cir. 2003) (interest used to defray "expenses incurred in creating and maintaining the inmates' accounts").[3] And finally,

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[3] The record in this case reflects that the Alabama DOC uses the interest that accrues on the PMOD accounts both "to (1) offset the costs of administering the accounts, and [to] (2) fund various recreational activities for the inmates." 381 F.3d at 1065 n.2.

the Eleventh Circuit's decision below is, we respectfully submit, correct on the merits and due to be affirmed.

CONCLUSION

For the foregoing reasons, the State neither opposes nor formally acquiesces in the petition for writ of certiorari. In the event that certiorari is granted, the Court should affirm the Eleventh Circuit's decision.

Respectfully submitted,

Troy King
Attorney General

Kevin C. Newsom
Solicitor General
Counsel of Record

STATE OF ALABAMA
Office of the Attorney General
11 South Union Street
Montgomery, AL 36130
(334) 242-7300

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